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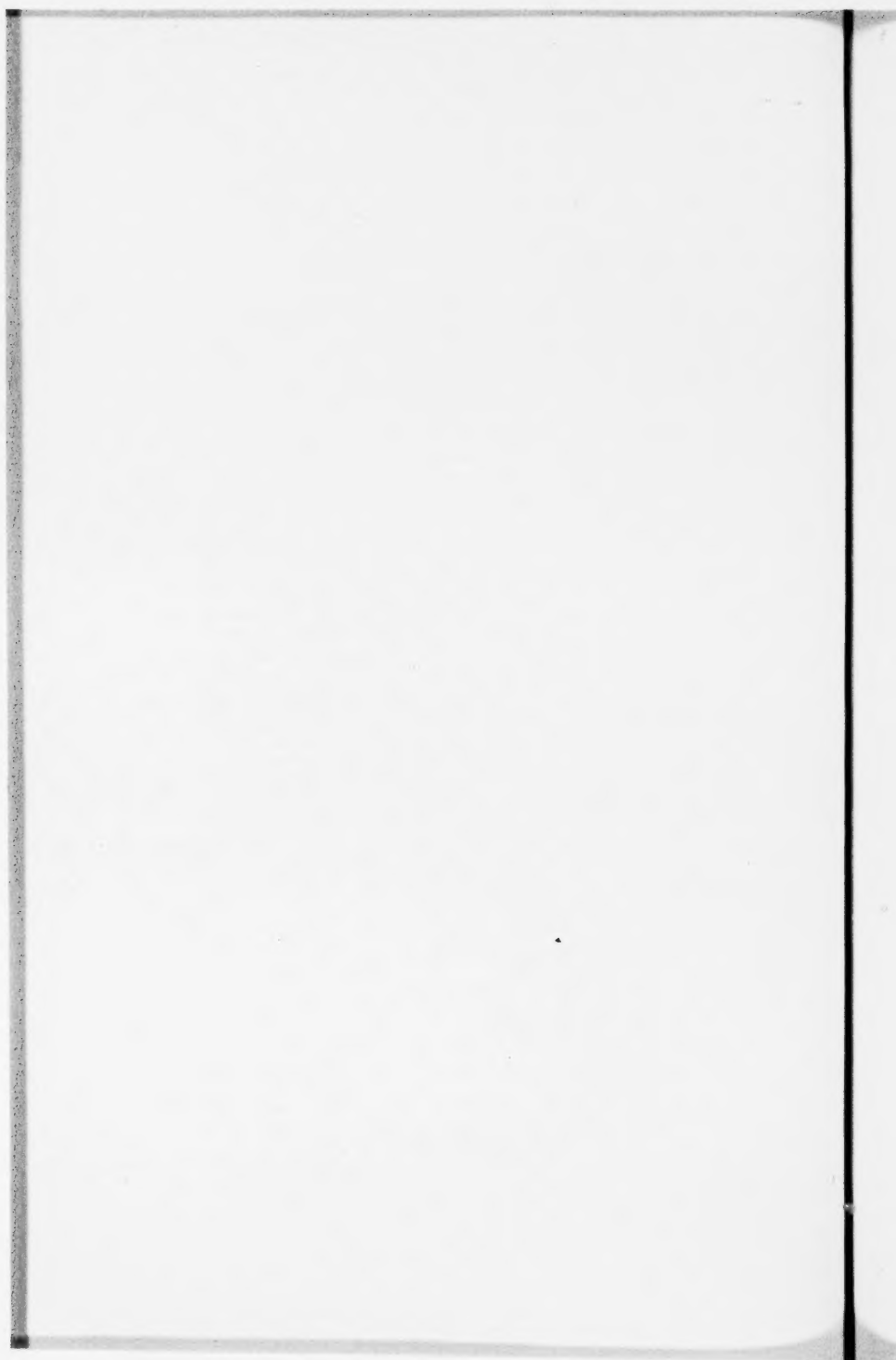
CHARLES ELMORE DROPLEY
CLERKIN THE
Supreme Court of the United States

OCTOBER TERM, 1944.

No. **828**DANIEL O. HASTINGS, as Special Trustee of Standard Gas and
Electric Company, Debtor,*Petitioner,**against*HAYSTONE SECURITIES CORPORATION, a corporation of the
State of New York,*Respondent,**and*

H. M. BYLLESBY AND COMPANY; BYLLESBY CORPORATION; WALTER T. ROSEN,
HARRY B. LAKE, PAUL MARSHALL ROSENTHAL, HENRY MARCH, JOHN
ROSENTHAL and EDWARD E. THALMANN, as Co-Partners doing business under
the firm name and style of Ladenburg, Thalmann & Co.; EDWARD E.
THALMANN, as surviving executor of the last will and testament of ERNEST
THALMANN, deceased; BENJAMIN S. GUINNESS; LOUIS M. LEVINE, ALMA METZ
and HENRY L. MOSES, as executors of the last will and testament of Rudolph
Metz, deceased; SIDNEY BACHARACH, VIRGINIA M. ROSENTHAL, PAUL M.
ROSENTHAL, JOHN ROSENTHAL and FREDERICK M. HEIMERDINGER, as executors
of the last will and testament of Moritz Rosenthal, deceased; FIRST SECURITY
COMPANY, a corporation of the State of New York; AMEREX HOLDING CORPO-
RATION, a corporation of the State of New York; UNION TRUST COMPANY OF
PITTSBURGH, a corporation of the Commonwealth of Pennsylvania; STANDARD
POWER AND LIGHT CORPORATION, a corporation of the State of Delaware;
ARTHUR C. ALYN; BERNARD F. BRAHENY; JOSEPH H. BRIGGS; ORJA G.
CORN; ALBERT S. CUMMINS; HENRY C. CUMMINS; VICTOR EMANUEL;
DENNIS T. FLYNN; ROBERT J. GRAF; E. CARLETON GRANBERY; JOHN L. GRAY;
ROBERT G. HUNT; HENRY H. JONES; SAMUEL KAHN; WILLIAM C. LANGLEY;
CHESTER C. LEVIS; DUNCAN R. LINSLEY; HERBERT LIST; BERNARD W. LYNCH;
MATTHEW A. MORRISON; THOMAS A. O'HARA; JAMES F. OWENS; ROBERT F.
PACK; WILLIAM G. POHL; JOHN P. PULLIAM; WILLIAM F. RABER;
ROYAL E. T. RIGGS; ANDREW W. ROBERTSON; LOUIS H. SEAGRAVE; FREDERICK
W. STEHR; T. BERT WILSON; ANNA G. BREWER, as Executrix of the last will
and testament of Chauncey M. Brewer, deceased; and MARTIN J. O'BRIEN,
as executor of the last will and testament of John J. O'Brien, deceased,

*Defendants.***PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF APPEALS OF THE STATE OF NEW YORK.**FRANCIS J. QUILLINAN,
*Counsel for Petitioner.*SIDNEY R. NUSSENFELD,
MAX J. RUBIN,
WILLIAM H. FOULK,
FREDERICK BAUM,
Of Counsel.



INDEX.

	PAGE
Opinions Below	2
Jurisdictional Statement	2
Statute Involved	5
Questions Presented	5
Statement of the Matter Involved.....	6
Reasons for Granting the Writ.....	8
Conclusion	17
Appendix	18

TABLE OF CASES CITED.

	PAGE
<i>Ancient Egyptian Arabic Order N. M. S. v. Michaux</i> , 279 U. S. 737.....	13
<i>Buttles v. Smith</i> , 281 N. Y. 226.....	3, 11, 13, 14
<i>Cole v. Knickerbocker Life Ins. Co.</i> , 23 Hun 255.....	11
<i>Fairbanks Steam Shovel Co. v. Wills</i> , 240 U. S. 642.....	9
<i>Fisher v. Whiton</i> , 317 U. S. 217.....	11
<i>Hastings v. Byllesby & Co.</i> , 286 N. Y. 468.....	6
<i>Hayes v. Gibson</i> , 279 Fed. 812.....	9
<i>In re Dalton Electric Co.</i> , 7 F. Supp. 465.....	10, 15
<i>In re Philadelphia & Reading Coal and Iron Co.</i> , 105 F. (2d) 354.....	15
<i>In re Seward Dredging Co.</i> , 242 Fed. 225, cert. den. 245 U. S. 651.....	9
<i>In re Standard Gas & Electric Co.—Hastings v. H. M. Byllesby & Co.</i> , 119 F. (2d) 658.....	7
<i>In re Toms</i> , 101 F. (2d) 617.....	9
<i>Kiskadden v. Steinle</i> , 203 Fed. 375.....	15
<i>Levy v. Paramount Publix Corp.</i> , 265 N. Y. 629.....	11, 13
<i>Paulsen v. Van Steenbergh</i> , 65 How. Pr. 342.....	11
<i>Postal Tel. Cable Co. v. Newport</i> , 247 U. S. 464.....	13
<i>Rosenkranz v. Doran</i> , 264 App. Div. 335.....	12, 14, 15
<i>Southern Dairies v. Banks</i> , 92 F. (2d) 282.....	9
<i>Steele v. Isman</i> , 164 App. Div. 146.....	11
<i>Shepard Co. v. Taylor Publishing Co.</i> , 234 N. Y. 465.....	12, 14
<i>Stephan v. Merchants Collateral Corp.</i> , 256 N. Y. 418	15
<i>Ward v. Love County</i> , 253 U. S. 17.....	13
<i>Whitfield v. Kern</i> , 122 N. J. Eq. 332, 192 Atl. 48.....	9

OTHER AUTHORITIES CITED.

	PAGE
Act of June 25, 1910, c. 412, sec. 8, 36 Stat. 840.....	3, 5, 9
Act of June 22, 1938, c. 575, sec. 1, 52 Stat. 879, 881 (Bankruptcy Act sec. 70c, 11 U. S. C. sec. 110c)	3, 5, 6, 7, 8, 9, 12, 16
Bankruptcy Act sec. 47(a)(2), c. 541, 30 Stat. 557.....	3, 5
N. Y. Civil Pract. Act. sec. 11.....	11
N. Y. General Corporation Law Secs. 60, 61	6, 7, 8, 11, 13, 18, 19
N. Y. Stock Corporation Law Sec. 58.....	12
4 Remington on Bankruptcy (4th ed.); secs. 1507, 1547	9

3

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Respondent,

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as executor of the last will and testament of John J. O'Brien, deceased,
Defendants.

**PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF THE
STATE OF NEW YORK.**

*To the Honorable, the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

DANIEL O. HASTINGS, as Special Trustee of Standard Gas and Electric Company, Debtor, by his attorneys, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of New York entered in the above case on October 13, 1944, dismissing the complaint as against the respondent Haystone Securities Corporation and affirming the judgment of the Appellate Division of the Supreme Court of New York for the First Department, which reversed the order of the Supreme Court, New York County.

Opinions Below.

The opinion of the Supreme Court, New York County (R. 67) is not reported. The opinion of the Appellate Division of the Supreme Court for the First Department (R. 73) is reported in 265 App. Div. 643 and in 40 N. Y. S. 2d 299. The opinion of the New York Court of Appeals (R. 82) is reported in 293 N. Y. 404.

Jurisdictional Statement.

The remittitur of the Court of Appeals of New York was entered on October 13, 1944 (R. 87). The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended, of the Act of February 13, 1925, on the ground that the decision below denied a title and right claimed by the petitioner under the Bankruptcy

Act, c. 541, 30 Stat. 557, as amended by c. 412, sec. 8, 36 Stat. 840, c. 575, sec. 1, 52 Stat. 879, 881 (11 U. S. C. sec. 110e).

The Federal question was passed upon by the Justice at Special Term in his opinion as follows (R. 67):

"As such trustee plaintiff is vested with such title as a trustee appointed under section 44 of the Bankruptcy Act acquires (see sec. 186 of the Bankruptcy Act) and possesses the same rights and powers as a section 44 trustee (sec. 187, Bankruptcy Act). A trustee appointed under section 44 (*supra*) 'shall be deemed vested as of the date of bankruptcy with all the rights, remedies and powers of a judgment creditor then holding an execution duly returned unsatisfied, whether or not such a creditor actually exists' (sec. 70, subdiv. C, Bankruptcy Act). It follows that plaintiff possesses all the rights, remedies and powers of a judgment creditor of Standard Gas & Electric Company holding an execution duly returned unsatisfied.

"The sixteenth cause of action may be maintained by a creditor of the corporation, pursuant to sections 60 and 61 of the General Corporation Law, only after the entry of judgment and the return of execution unsatisfied. The statute of limitations, therefore, did not commence to run against such cause of action in favor of a creditor until the entry of judgment and the return of execution unsatisfied (*Buttles v. Smith*, 281 N. Y. 226). It did not start to run as against the plaintiff until he was appointed trustee of the corporation, and thereby acquired the rights of a judgment creditor holding execution returned unsatisfied. Since plaintiff was not appointed trustee until November 26, 1937, less than three years prior to the commencement of this action, the statute of limitations is no bar to the successful maintenance of the action."

The Appellate Division, in reversing the order of the Special Term, passed upon the Federal question as follows (R. 77):

“Special Term reasoned that as Section 70e of the Bankruptcy Act (U. S. C. A., Title 11, Sec. 110e) provides that a trustee in bankruptcy is vested with ‘all the rights, remedies, and powers of a judgment creditor then holding an execution duly returned unsatisfied’, plaintiff acquired the rights of a judgment creditor on his appointment as trustee, and had a cause of action which did not accrue until his appointment. We deem this ruling erroneous. No doubt a trustee in bankruptcy may sue to enforce the rights of a creditor as well as to sue to collect those claims owned by the bankrupt estate. The trustee would be empowered to set aside fraudulent transfers of the bankrupt’s property, where the wrong complained of was actionable at common law, or under the Bankruptcy Act §67 (U. S. C. A., Title 11, §107). But the present action was not one to set aside a fraudulent transfer of the bankrupt’s property.”

The question was raised on appeal to the Court of Appeals by specification in the notice of appeal to that Court that appeal was taken from each and every part of the judgment of the Appellate Division (R. 69). Under the practice of the State of New York, this was the prescribed method for bringing up for review the entire judgment of the Appellate Division (N. Y. Civ. Pract. Act, Sec. 562). The question was briefed in the briefs of both petitioner and respondent submitted to the Appellate Division and to the Court of Appeals. The grounds upon which it is contended that the question involved is substantial are set forth under the Reasons for Granting the Writ, *infra* pp. 8-16.

Statute Involved.

Section 47 (a) (2) (now Section 70e) of the Bankruptcy Act, approved July 1, 1898, c. 541, 30 Stat. 557; as amended by Act of June 25, 1910, c. 412, sec. 8, 36 Stat. 840; Act of June 22, 1938, c. 575, sec. 1, 52 Stat. 879, 881 (11 U. S. C. Sec. 110e) provides:

“* * * The trustee, as to all property in the possession or under the control of the bankrupt at the date of bankruptcy or otherwise coming into the possession of the bankruptcy court, shall be deemed vested as of the date of bankruptcy with all the rights, remedies, and powers of a creditor then holding a lien thereon by legal or equitable proceedings, whether or not such a creditor actually exists; and, as to all other property, the trustee shall be deemed vested as of the date of bankruptcy with all the rights, remedies, and powers of a judgment creditor then holding an execution duly returned unsatisfied, whether or not such a creditor actually exists.”

Questions Presented.

1. Where a state statute entitles both a corporation and its judgment creditors holding execution returned unsatisfied to sue for wrongs done to the corporation, whether an action thereunder by a trustee in bankruptcy of the corporation may be declared barred by the statute of limitations even though such action would not have been barred if maintained by the judgment creditor.

2. Whether a trustee in bankruptcy of a corporation suing under a state statute which entitles both the corporation and its judgment creditors to maintain an action for

wrongs done to the corporation, is limited to the status and infirmities which would inhere if such suit were maintained by the corporation, or whether he is entitled under Section 70c of the Bankruptcy Act to be accorded the superior position which a judgment creditor so suing would have enjoyed.

Statement of the Matter Involved.

In September 1935, Standard Gas and Electric Company (hereinafter sometimes referred to as the Debtor) filed a petition for reorganization under Section 77B of the Bankruptcy Act in the United States District Court for the District of Delaware (R. 36). By order dated November 26, 1937, the District Court appointed petitioner as Special Trustee of the Debtor, with authority to bring suit upon certain causes of action described therein (R. 43). Jurisdiction was and still is reserved by the District Court over said causes of action (R. 45, 54, 57).

The petitioner as such trustee instituted suit in December 1939 in the Supreme Court, New York County. This sought an accounting under New York General Corporation Law Sections 60 and 61 from directors of the Debtor and co-conspirators for property of the corporation alleged to have been unlawfully and fraudulently appropriated by them, and for recovery of losses sustained by the corporation (R. 10). The provisions of the Gen. Corp. Law Sections 60, 61, under which the action was brought, are set forth in the appendix hereto.

Defendants first challenged petitioner's capacity to sue, by motion to dismiss the complaint. This motion was denied on appeal (*Hastings v. Byllesby & Co.*, 286 N. Y. 468). The opinion quoted with approval the statement of the United States Circuit Court of Appeals for the

Third Circuit which described the status of petitioner as follows (*In re Standard Gas & Electric Co.-Hastings v. H. M. Byllesby & Co.*, 119 F. (2d) 658, 661):

“It seems clear, however, from an examination of the order of appointment that the plaintiff was appointed trustee under section 77B with title to the choses in action sued on and with the powers which the Bankruptcy Act confers upon such a trustee to bring suit for the recovery thereof.”

The respondent Haystone Securities Corporation then moved to dismiss the 16th cause of action in the complaint on the ground of the statute of limitations (R. 4). The Special Term denied the motion (R. 3). It held that under Section 70c of the Bankruptcy Act (11 U. S. C. Sec. 110c), the petitioner became vested upon his appointment with the rights of a judgment creditor holding execution returned unsatisfied; that under Gen. Corp. Law Sections 60, 61, a creditor of the corporation could sue only after obtaining judgment with execution returned unsatisfied; and that therefore the statute did not start to run against the petitioner until he was appointed trustee (R. 67).

The Appellate Division reversed the foregoing order and directed judgment dismissing the complaint as against respondent Haystone Securities Corporation (R. 70). The Court of Appeals affirmed the decision of the Appellate Division (R. 87).

The opinion of the Court of Appeals (R. 82) did not question the New York decisions holding that in an action under Gen. Corp. Law Sections 60, 61, a creditor may not sue until entry of judgment with execution returned unsatisfied, and that therefore the statute does not commence run-

ning against such action until the creditor obtains judgment with execution returned unsatisfied. Nor did it question that petitioner occupied the status of a trustee in bankruptcy, with the rights of a judgment creditor pursuant to Section 70c of the Bankruptcy Act. However, the Court of Appeals purported to distinguish the instant case on the ground that it was a suit under subdivisions 1 and 2 of Gen. Corp. Law Section 60, based on acts which constituted a wrong to the corporation, that therefore the trustee could sue only in the right of the corporation, and concluded that the statute commenced running from the date that the corporation could have sued, and not from the appointment of the petitioner as trustee.

Petitioner contends that this constituted a denial to a trustee of the rights vested in him under Section 70c of the Bankruptcy Act, and a misinterpretation of a fundamental provision of the Bankruptcy Act, as more fully set forth under the Reasons for Granting the Writ, *infra* pages 8-16.

Reasons for Granting the Writ.

1. The Court of Appeals of New York has decided an important Federal question not in accord with the applicable decisions of the Federal and state courts. The holding of the Court of Appeals in the instant case is that where a bankruptcy trustee sues on the basis of acts which constituted a wrong to the corporation, then he is subject to the statute of limitations which would have governed if the bankrupt corporation had sued, even though a different and more beneficial statute would have applied if a judgment creditor with execution returned unsatisfied had instituted the action, according to the prior decisions which

are reaffirmed. This determination denies to petitioner a right clearly vested in him under Section 70c of the Bankruptcy Act.

Ever since the 1910 Amendment to the Bankruptcy Act added the "Strong Arm Clause" (Act of June 25, 1910, c. 412, sec. 8, 36 Stat. 840), it has been uniformly held that a trustee in bankruptcy no longer is vested merely with the title of the bankrupt, but he is granted the additional rights which would be accorded under state law to a creditor holding a lien or obtaining judgment with execution returned unsatisfied, regardless of whether such creditor actually exists (*Fairbanks Steam Shovel Co. v. Wills*, 240 U. S. 642, 649; *Southern Dairies v. Banks*, 92 F. (2d) 282, 285 (C. C. A. 4); *In re Toms*, 101 F. (2d) 617, 619 (C. C. A. 6); *In re Seward Dredging Co.*, 242 Fed. 225, 227 (C. C. A. 2), cert. den. 245 U. S. 651; *Hayes v. Gibson*, 279 Fed. 812, 814 (C. C. A. 3); *Whitfield v. Kern*, 122 N. J. Eq. 332, 192 Atl. 48; 4 Remington on Bankruptcy (4th ed.), Secs. 1507, 1547).

The trustee is entitled to choose whichever of these rights, whether derived from the bankrupt or the creditor status, may be the more favorable. When suing on the basis of the rights of creditors, he is not limited by the infirmities that would attach to a suit by the bankrupt.

As stated in *In re Seward Dredging Co.* (*supra*):

" * * * Since 1910, a trustee has two rights as to property in his custody; i. e., that of the bankrupt and that of such a creditor as is described. They are different rights, sometimes antagonistic; the trustee can take his choice."

In *In re Dalton Electric Co.*, 7 F. Supp. 465, 468 (D. C. Miss.), the Court stated:

“Returning to the right of the corporation to sue an officer who has made an illegal loan of corporate funds to a stockholder of the corporation, the claim is a property right or chose in action vesting in the corporation by reason of the violation of a statutory duty. This property right passes to the trustee in bankruptcy under section 70 of the act (11 U. S. C. A. §110). For this illegal loan a direct right, remedy, or power to sue is given specified creditors by said section 4151 of the Mississippi Code of 1930. It is a right ‘as to property of the bankrupt’ given creditors of the bankrupt by a state statute. It also passes to the trustee in bankruptcy under section 47a (2a) of the Bankruptcy Act, because, under said section, the trustee does not merely stand in the shoes of the bankrupt, but occupies the status of its most favored general creditor who has obtained a judgment and holds an execution duly returned unsatisfied.

Since the amendment of 1910, decisions holding that a trustee has no other right than belonged to the bankrupt are no longer controlling.”

The Court of Appeals in the instant case has held that this accepted construction of the Bankruptcy Act does not apply where the rights of the bankrupt corporation and its creditors would differ under the state statute of limitations. It has held that if the statute of limitations would have barred an action by the bankrupt at the date of bankruptcy, then the trustee must also be held barred, even though under the state law a creditor obtaining judgment with execution returned unsatisfied immediately prior to the date of bankruptcy would not have been barred from maintaining the same suit.

The rule in New York is that the period of limitations "must be computed from the time of the accruing of the right to relief by action" (N. Y. Civ. Pract. Act, Sec. 11). This is in accordance with the general rule (*Fisher v. Whiton*, 317 U. S. 217, 220).

Under N. Y. Gen. Corp. Law, Sections 60, 61 (quoted *infra*, appendix), the right is given to both a corporation and its creditors to sue for wrongs done to the corporation. The New York Courts have uniformly held that under this statute a creditor acquires no "right to relief by action" until he obtains judgment with execution returned unsatisfied. This rule has been applied to all creditors' actions under Gen. Corp. Law Sec. 60, regardless of what subdivision thereunder they may be brought (*Levy v. Paramount Publix Corp.*, 265 N. Y. 629; *Buttles v. Smith*, 281 N. Y. 226; *Steele v. Isman*, 164 App. Div. 146; *Cole v. Knickerbocker Life Ins. Co.*, 23 Hun 255; *Paulsen v. Van Steenberg*, 65 How. Pr. 342).

It follows from the foregoing that the statute of limitations does not start running against an action by a creditor under Gen. Corp. Law Section 60 until he obtains judgment with execution returned unsatisfied, and so it has been consistently held in New York. Thus, in *Buttles v. Smith*, *supra*, the Court stated (281 N. Y. at p. 236):

"Where an action is brought under section 60 of the General Corporation Law or section 15 of the Stock Corporation Law, no cause of action accrues to a creditor, with certain exceptions* which need not be considered here since none of them have been

* The exceptions referred to are cases in which it would obviously be futile to obtain judgment and levy execution as where the corporation has been dissolved and a receiver appointed (*Steele v. Isman*, 164 App. Div. 146, 149; *Levy v. Paramount Publix Corp.*, 149 Misc. 129, 132, *aff'd*. 241 App. Div. 781, *aff'd*. 265 N. Y. 629).

alluded to by respondents, until judgment has been obtained and execution returned unsatisfied (*Levy v. Paramount Publix Corp.*, 265 N. Y. 629), and any statute of limitations did not commence to run until the cause of action accrued to the creditor (*Shepard Co. v. Taylor Publishing Co.*, 234 N. Y. 465)."

In the similar situation of a suit by a judgment creditor under New York Stock Corporation Law Section 15 to recover a preferential payment, the Court of Appeals in *Shepard Co. v. Taylor Publishing Co.*, 234 N. Y. 465, 468, stated:

"* * * The right of a creditor to bring an action to set aside a fraudulent transfer of property made by his debtor ordinarily does not accrue until the recovery of a judgment against the debtor and the return of an execution thereon unsatisfied. Until that time, therefore, the Statute of Limitations does not begin to run against such a cause of action. (*Weaver v. Haviland*, 142 N. Y. 534; *Holland v. Grote*, 125 App. Div. 413.)"

Likewise, in a suit under New York Stock Corporation Law Section 58 which creates a liability of directors to a corporation and its judgment creditors for payment of dividends out of capital, the Courts have held that the statute of limitations does not start running against a creditor until he obtains judgment (*Rosenkranz v. Doran*, 264 App. Div. 335).

Since under Section 70e of the Bankruptcy Act a trustee acquires the same rights as would be accorded to a creditor who obtained judgment with execution returned unsatisfied, it follows that a suit by the trustee under Gen. Corp. Law Section 60 would not accrue until his appointment. Hence the instant action is not barred, even though it might have

been barred if the corporation had sued. So the Special Term Court reasoned and held (R. 67).

The contrary conclusion of the Court of Appeals purports to rest upon non-Federal grounds, but there is no reality or substance to the pretended distinction between the instant case and the foregoing New York authorities. This Court has held on numerous occasions that it is within its province "to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-Federal grounds of decision that were without any fair or substantial support" (*Ward v. Love County*, 253 U. S. 17, 22; *Postal Tel.-Cable Co. v. Newport*, 247 U. S. 464, 473-5; *Ancient Egyptian Arabic Order N. M. S. v. Michaux*, 279 U. S. 737, 744).

The opinion of the Court of Appeals purports to distinguish the instant case from the prior New York authorities on the ground that here the action was brought under Gen. Corp. Law Section 60, subdivisions 1 and 2, involving a derivative action for wrongs done to the bankrupt. But the Court does not purport to question or overrule all of the prior New York authorities holding that a creditor has no standing to sue under *any* subdivision of Gen. Corp. Law Section 60 until he has obtained judgment with execution returned unsatisfied. *Levy v. Paramount Public Corp.* (265 N. Y. 629), which reaffirmed this doctrine, was an action brought under subdivisions 1 and 2, the same as in the instant case, and was approved in *Buttles v. Smith* (281 N. Y. 226), which in turn was approved in the instant case. It is still the New York law that the statute of limitations starts running only from "the accruing of the right to relief by action"; and that a creditor has no right to relief by action under *any* subdivision of Gen. Corp. Law Section

60 until obtaining judgment with execution returned unsatisfied.

Nor is there any distinction in the fact that the acts alleged in the instant case also constituted a cause of action for which the corporation could have sued. The prior cases held that the statute did not commence running until after the creditor obtained judgment, without regard to whether the corporation could or could not have sued on the same facts. Thus, in the *Shepard* case, *supra*, the Court stated: "The corporation or its stockholders might have brought this action" (234 N. Y. at p. 468). And the payment in the *Buttles* case, *supra*, of corporate funds in discharge of personal obligations of the president constituted a wrong to the corporation. Likewise, the payment of dividends out of capital in *Rosenkranz v. Doran*, *supra*, created a cause of action enforceable by the corporation, as well as by its judgment creditors. Nevertheless, in all these decisions, the Courts held that the action accrued when the creditor obtained judgment, without giving any consideration or weight to the question whether a cause of action based on the acts alleged would have been barred if sued on by the corporation.

If the opinion below were actually creating a distinction on the basis of whether the acts sued on constituted a wrong to the corporation, then it would have to overrule all of the foregoing prior New York decisions. It did not do so, but expressly reaffirmed the *Buttles* decision. Hence, the fact that the acts alleged constituted a wrong to the corporation cannot be the distinguishing element in the instant case, since the same fact played no part in the prior decisions which are reaffirmed. Indeed, it is difficult to see how any such distinction could be made without abrogating the rule established in the cases set forth above, since in those cases

the right given to the creditor is to vindicate wrongs done to the corporation.

2. The question involved in the instant case affects the rights of trustees in bankruptcy in the numerous situations in which state statutes confer rights upon both a corporation and its creditors to sue for improper acts done with respect to the corporation. This would include statutes permitting suit to be instituted by creditors for payments of dividends made out of capital (*e.g. Rosenkranz v. Doran*, 264 App. Div. 335); for unpaid stock subscriptions (*e.g. Kiskadden v. Steinte*, 203 Fed. 375 (C. C. A. 6)); for improper loans to officers (*e.g. In re Dalton Electric Co.*, 7 F. Supp. 465); and for waste of corporate assets (*e.g. Stephan v. Merchants Collateral Corp.*, 256 N. Y. 418). In all of these cases, the doctrine of the Court below would limit the suit by a trustee in bankruptcy to the status which the bankrupt corporation would have occupied, even though a judgment creditor so suing would have enjoyed superior rights with reference to the statute of limitations or in any other respect.

Suits by trustees appointed under the Bankruptcy Act have increased in number and importance as a result of the provisions of Section 77B and its successor Chapter X, which place a duty upon the reorganization court to investigate all charges of mismanagement and provide for their prosecution by a trustee when liability may exist. As stated in *In re Philadelphia & Reading Coal & Iron Co.*, 105 F. (2d) 354, 356 (C. C. A. 3):

“We think it clear that it is not the purpose of Sec. 77B, or of Chap. X which succeeded it, to furnish immunity to wrongdoing by corporate officers if the requisite majorities of creditors and stockholders approve a plan of reorganization which

leaves those officers in possession of the debtor without an investigation of their conduct. On the contrary the duty of the court to direct the investigation of all substantial allegations of mismanagement and fraud is plain. It is equally plain that it would not be fair to the individual creditors of a debtor for the court, before the preliminary report required of the trustee or examiner by Sec. 167 (5) of Chap. X, 11 U. S. C. A. §567 (5), had been made, to permit the submission to them of a plan of reorganization which did not adequately preserve and provide for the prosecution of causes of action which might exist if such allegations of mismanagement and fraud were true."

It is essential to the effectuation of this policy that the Courts recognize the full strength of the weapon with which such trustees are armed under the clear mandate of Section 70c of the Bankruptcy Act, that their rights are derived not merely from the debtor, but also from the status of creditors of the debtor.

Conclusion.

The decision of the Court below is in conflict with the applicable decisions of the Federal and State Courts. The question involved is one of substantial importance which calls for an authoritative ruling by this Court. Therefore it is respectfully submitted that this petition for a writ of certiorari should be granted.

WHEREFORE, petitioner prays that this Court may issue its writ of certiorari to review the decision of the Court below.

Dated: January 8, 1945.

DANIEL O. HASTINGS, as Special
Trustee of Standard Gas and
Electric Company, Debtor

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